# Overcoming Domestic Legal Impediments to the Investigation and Prosecution of Human Rights Violations: The Case of Argentina

*by Fabián Raimondo**

## Introduction

An Argentinean court recently convicted the former President of Argentina, General Jorge Videla, of committing a number of serious human rights violations during his reign of terror over thirty years ago.[1] The path to his conviction was long and complex, as investigations and prosecutions of serious human rights violations generally are. The reason for this is the host of knotty factual and legal issues such investigations usually raise, including whether the suspects are still alive; whether the government in office has the political will to support the investigations of the violations; whether the competent courts are able to collect evidence of the commission of the violations and of the guilt of the alleged perpetrators; and, whether statutory limitations or amnesty laws are in force that would prevent the investigation and prosecution of the violations.

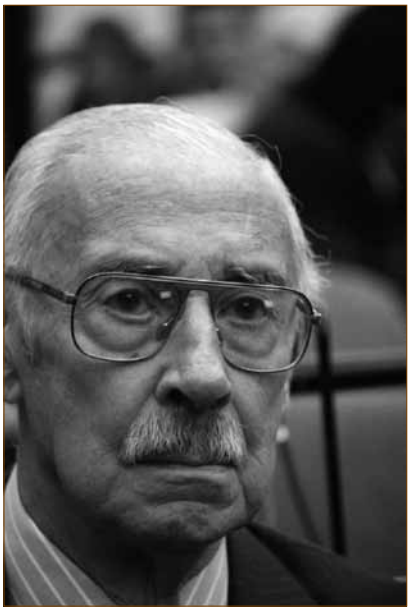

*Photo by Daniel Otero.*

General Jorge Videla during his trial in Argentina.

This article will briefly describe, explain, and analyze the three most important legal issues complicating the possible investigation and prosecution of human rights violations committed in Argentina during General Videla's military dictatorship, as well as how the Argentinean Supreme Court of Justice (Supreme Court) has resolved these issues. The first issue is whether the human rights violations committed during the dictatorship were subject to statutory limitations. Second, whether the so-called "Amnesty Laws" enacted by the Congress of Argentina could be lawfully nullified with retroactive effect. Third, whether the presidential pardons in favor of those involved in political violence could be lawfully nullified with retroactive effect. Many factual issues, even if critical to an overall assessment of whether suspects are likely to be convicted, are not discussed in this article.

The first section will provide some background information on the events preceding the current trials for past human rights violations in Argentina. The next section will show how the Supreme Court has resolved these three legal issues by directly applying provisions of the American Convention on Human Rights (ACHR) as interpreted by the Inter-American Court of Human Rights (IACtHR) and customary international law. Finally, the conclusion will note that although the Supreme Court's legal findings concerning the interpretation and application of the ACHR were well reasoned, the same cannot be said with regard to the Supreme Court's interpretations of *jus cogens* and customary international law. Be that as it may, by resolving those three legal hurdles, the Supreme Court has paved the way for the investigation of the serious human rights abuses committed during General Videla's dictatorship and the prosecution of those responsible.

## Background Information

In March 1976, the Argentinean military, led by General Videla, overthrew the government presided over by Isabel Martínez de Perón. General Videla's dictatorship lasted until December 10, 1983, when the democratically elected President Raúl Alfonsín took office. Alfonsín immediately faced the challenge of setting out the appropriate mechanisms to investigate the fate of the *desaparecidos* (individuals who were forcefully disappeared during the dictatorship). To this end, Alfonsín created the National Commission on the Disappeared five days after his inauguration as president. As a commission of inquiry, Alfonsín charged the National Commission on the Disappeared with the task of receiving statements concerning crimes committed and transmitting them to the courts having jurisdiction over the events. However, the Commission did not have the power to determine legal responsibility itself. In September 1984, the Commission published a report entitled *Nunca Más* (Never Again), which documented the forced disappearance of over 9,000 people and recommended the prosecution of those responsible.[2]

*Nunca Más* formed the evidentiary basis for instituting criminal proceedings against the nine members of the first three military juntas. These proceedings are known worldwide as the "Juntas Trial," which resulted in the conviction of five of the accused, including Videla, and the acquittal of the remaining four.[3] However, the exemplary Juntas Trial was followed by the enactment of two laws and two presidential decrees that led to

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impunity for the perpetrators and accomplices of the most serious human rights violations ever committed in Argentina.

In December 1986, the Argentine Congress passed Law No. 23.492 (*Ley de Punto Final*) and in June 1987, it passed Law No. 23.521 (*Ley de Obediencia Debida*).[4] The first of the two laws foreclosed the possibility of penal action against military and security officials who participated in operations to "repress terrorism" following Videla's *coup d'état*.[5] The second of the two laws stipulated the non-rebuttable presumption that mid- and low-ranking military and security officials had committed the crimes specified in the law only pursuant to superior orders and therefore could not be held accountable for their actions.[6] These laws effectively terminated the pending criminal proceedings instituted against such officials and rendered impossible the launch of new investigations and prosecutions against them. In October 1989, recently elected President Carlos Menem granted a collective pardon to about fifty additional high-ranking military officials under prosecution for acts of "State terrorism."[7] In December 1990, Menem granted another pardon to the members of the military juntas convicted during the Juntas Trial.[8]

Since these laws and presidential decrees came into effect, non-governmental organizations such as *Madres de Plaza de Mayo* and the *Centro de Estudios Legales y Sociales*, as well as international organs such as the Inter-American Commission of Human Rights (IACHR), have pushed for Argentina to adopt a new legal framework to facilitate the further investigation of crimes committed and the prosecution of those responsible. Such a framework would include creating legislation to nullify the Amnesty Laws and presidential pardons. In this vein, the Argentine Congress declared the Amnesty Laws null and void with retroactive effect in 2003. However, at the time, it was unclear what the Supreme Court would decide regarding the constitutionality of this controversial legislation.[9] In essence, in order to launch investigations into human rights abuses by the military and prosecute those responsible, three main legal issues had to be resolved.

## Three Major Legal Issues

The Supreme Court resolved the three major legal hurdles to prosecutions in three successive cases. In 2004, in *Arancibia Clavel*, the court resolved whether the human rights violations committed during the military dictatorship were subject to statutory limitations. In 2005, in *Simón and others*, the court resolved whether the Amnesty Laws could be lawfully nullified with retroactive effect. In 2007, in *Mazzeo and others*, the court resolved whether the two presidential pardons granted by Menem could be lawfully nullified with retroactive effect. The Supreme Court resolved these issues by directly applying provisions of the ACHR as interpreted by the IACtHR and customary international law.

### Statutory Limitations

Enrique Arancibia Clavel was a member of Chile's intelligence service, *Dirección de Inteligencia Nacional* (external DINA), whose main task was to implement Chile's policy of persecution against opponents to the Pinochet regime living in Argentina. In 2000, the Oral Tribunal on Federal Criminal Matters convicted Arancibia Clavel of two murders and participation in a criminal organization (the external DINA) between 1974 and 1978. He appealed the judgment, asserting that he should not have been convicted for his participation in a criminal organization because the ten-year statute of limitations for such crimes elapsed. The State of Chile, as the other party to the appellate proceedings, argued that the crime in question constituted a crime against humanity and that such crimes are not subject to statutory limitations. The cassation chamber agreed with Arancibia Clavel's argument and reversed his conviction for participation in a criminal organization. Chile appealed to the Supreme Court.[10]

The Supreme Court assessed the applicability of statutory limitations to the crime at stake in accordance with the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (Statutory Limitations Convention), to which Argentina had been a party since 2003, and which also had recently been incorporated into the Constitution of Argentina.[11] In order to determine whether the crime in question amounted to a crime against humanity, the Supreme Court evaluated the relevant facts in light of the Rome Statute of the International Criminal Court (ICC) and the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). It found that the facts corresponded exactly to the conduct described in Article 25(3)(d) of the ICC Statute pertaining to individual criminal responsibility, Articles 2 and 3(b) of the Genocide Convention, and Article 2 of the Statutory Limitations Convention.[12] Furthermore, the Supreme Court found that because war crimes and crimes against humanity are *jus cogens* norms of international law, statutory limitations do not apply, even before the adoption of the Statutory Limitations Convention in 1968.[13] Given that the crime in question amounted to a crime against humanity and that

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crimes against humanity were not subject to statutory limitations under customary international law at the relevant time, the court held that the period of limitation set in the Penal Code of Argentina should not have been applied.[14]

The *Arancibia Clavel* decision had several practical legal effects. The Supreme Court held that no statutory limitations would apply to the human rights abuses committed by the military between 1976 and 1983. This holding, while significant, contained unconvincing legal reasoning. First, it is worth noting that crimes against humanity were not criminalized as such in the Penal Code of Argentina at the relevant time. As a result, a murder that amounted to a crime against humanity under international law would have been an "ordinary" crime subject to statutory limitations under Argentinean law. Hence, it made perfect sense for the Supreme Court to assess whether the crime matched conduct that amounted to a crime against humanity under international law.

However, the International Criminal Tribunal for the former Yugoslavia (ICTY) has established that to determine whether conduct amounts to a crime under domestic law or international law, both elements of the crime — the objective element (*actus reus*) and the subjective element (*mens rea*) — must be assessed.[15] The Supreme Court failed to determine whether both elements of the crime corresponded with a crime against humanity at the relevant time. Instead, the Supreme Court only focused on the objective element, neglecting the subjective one. The Supreme Court also assessed the defendant's conduct in light of the crimes enumerated in the ICC Statute, a legally questionable determination because this treaty was adopted more than twenty years after the commission of the crime at issue. Considering that the customary definition of crimes against humanity underwent substantial evolution since 1915,[16] it is not immediately apparent that the provision of the ICC Statute referred to by the Supreme Court to assess Arancibia Clavel's conduct corresponded with the notion of crimes against humanity under customary international law in the 1970s.

Moreover, the Supreme Court's finding that crimes against humanity were not subject to statutory limitations in the 1970s was also based on questionable legal grounds. The Supreme Court did not demonstrate the existence of a general practice accepted as law, nor did it refer to any ruling of an international court or to the opinion of learned scholars regarding statutory limitations.[17] Instead, the Supreme Court based its finding on language in the preamble to the Statutory Limitations Convention, in which State parties "affirmed" the existence of the principle of the non-applicability of statutory limitations to crimes against humanity.[18] This is not strong evidence of the existence of a relevant rule of customary international law at the time of the original crimes. One indication that this principle was not part of customary international law before the adoption of the Statutory Limitations Convention, is that the preamble used the word "affirmed" rather than "reaffirmed."[19]

Despite these legal obstacles, by declaring the non-applicability of statutory limitations to crimes against humanity committed in the 1970s, the Supreme Court overcame the first important legal impediment to the investigation and prosecution of the human rights violations committed in Argentina during those years. The following year, the Supreme Court considered the next legal impediment to such investigation and prosecution, the Amnesty Laws.

## Amnesty Laws

The second legal hurdle consisted of determining whether the Amnesty Laws could be constitutionally nullified with retroactive effect. The Supreme Court addressed this issue in the *Simón and others* case.[20] Julio Simón was a member of the Argentinean Federal Police and had been charged with kidnapping, torture, and forced disappearance of persons. In 2001, the Federal Court for Criminal and Correctional Matters No. 4 declared the Amnesty Laws unconstitutional because they violated the ACHR, Article 29 of the Constitution of Argentina, and a number of other human rights treaties to which Argentina was party.[21]After successive appeals the issue came before the Supreme Court.

*Photo by Daniel Otero.*

Julio Simón reacts during his trial in Argentina.

The Supreme Court found the Amnesty Laws unconstitutional for several reasons. First, since the adoption of the Amnesty Laws, international human rights law developed legal principles that prohibited states from enacting laws aimed at avoiding the investigation of crimes against humanity and the prosecution of the responsible people.[22] By incorporating the ACHR and the International Covenant on Civil and Political Rights into the Constitution, Argentina assumed the duty to prosecute crimes against humanity under international law.[23] Because the Amnesty Laws were designed to leave unpunished serious human rights violations, they violated these treaties, and the Constitution of Argentina.[24] Moreover, the case law of the IACtHR established essential guidelines for the interpretation of the ACHR[25] and the IACtHR held in *Barrios Altos v. Peru* that the state parties to the ACHR should not establish internal mechanisms that would thwart state compliance with the obligation to prosecute and investigate serious and widespread human rights violations.[26] Therefore, Argentina was bound to abolish the Amnesty Laws, deprive them of legal effects, and overturn the prohibition against the retroactive application of criminal law, leading to the detriment of the accused.[27]

The Supreme Court's decision in *Simón and others* was not unanimous. In his dissent, Judge Fayt pointed out several aspects of the majority's reasoning with which he could not agree. First, he explained that the Argentine Congress did not have the power to declare unconstitutional the Amnesty Laws with retroactive effect, because this was a power of the judicial branch.[28] Second, the application of the Inter-American Convention on the Enforced Disappearance of Persons violated the principle of legality to the detriment of the accused, as it was not in force at the time of the perpetration of crimes in question.[29] Third, the Statutory Limitations Convention was not applicable because Argentina became a party to it in 1995, and its application to Simón was thus retroactive. Additionally, Judge Fayt asserted that in 1975 forced disappearance was not yet considered a crime against humanity under customary international law.[30] Furthermore, the application of international treaties by Argentinean courts must not prevent the application of the principle of legality, because it is a constitutional principle of public law.[31] Moreover, Judge Fayt argued that the majority erred in invoking the IACtHR's judgment in *Barrios Altos* as a precedent, because the amnesty laws examined by the IACtHR in that case consisted in self-amnesty laws, unlike the Amnesty Laws in the case against Simón, enacted to excuse officials of the government in power from criminal responsibility.[32]

The majority's decision raised controversies not only within the Supreme Court, but also in legal scholarship. On one side, some scholars highlight the fact that the Supreme Court has confirmed the important function of international law in general and human rights law in particular in dealing with crimes against humanity.[33] On the other side, there are scholars who believe that, notwithstanding the laudable aim of preventing and punishing all crimes against humanity, the decision was regrettable because it ignored significant constitutional constraints, like the right to freedom from retroactive punishment by an *ex post facto* law.[34]

This decision clarified the constitutionality of the law passed by Congress in 2003 to nullify the Amnesty Laws with retroactive effect. By declaring the unconstitutionality of the Amnesty Laws, the Supreme Court overcame the second legal impediment to the investigation and prosecution of the human rights violations committed in Argentina during the military dictatorship. Accordingly, Simón and others responsible for criminal conduct have been convicted and sentenced for their egregious crimes.[35] However, in order to fully investigate the crimes committed under General Videla's dictatorship and to allow the prosecution of all the responsible, one legal impediment still remained — the pardons granted by President Menem.

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### Presidential Pardons

The last legal impediment to the investigation and prosecution of the human rights abuses committed in Argentina during the military dictatorship were the presidential pardons granted by President Menem in 1989 and 1990. The Supreme Court had to determine whether the presidential pardon granted by Decree 1002/89 was consistent with Argentina's international obligations in the *Mazzeo and others* case.[36]

According to the Supreme Court, the alleged participation of the defendants in murders, kidnappings, torture, bodily harm, and trespassing amounted to crimes against humanity.[37] Under the ACHR, states are obliged to investigate, prosecute, and punish individuals responsible for serious human rights breaches,[38] therefore Decree 1002/89 was inconsistent with the preemptory nature of crimes against humanity as a *jus cogens* norm of international law and the ACHR because it violated right of victims to an effective remedy and the right to discover the truth about such crimes.[39] The Supreme Court held that Decree 1002/89 was therefore unconstitutional.[40]

The Supreme Court's ruling was correct to the extent that it invoked the right provisions of the ACHR and case law of the IACtHR. However, the Supreme Court's legal reasoning based on its understanding of *jus cogens* norms of international law was unconvincing. From the outset, it should be noted that the Supreme Court used the terms *jus cogens* and customary law as synonyms and, in so doing, it disregarded their conceptual difference.[41] Here, it suffices to mention that (i) not all rules of customary international law are rules of *jus cogens* and (ii) rules of conventional law may amount to *jus cogens*. In his dissent,

Judge Fayt criticized the inconsistent use of both terms throughout the decision.[42]

Perhaps most importantly, customary international law does not prohibit pardons of sentences for crimes at present, let alone in 1989 — the year in which Menem granted this pardon. In its reasoning, the Supreme Court did not demonstrate the existence of customary international law to that effect, a principle that could have been demonstrated through the existence of relevant state practice. Article 28 of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY), Article 27 of the Statute of the International Criminal Tribunal for Rwanda (ICTR), and Article 23 of the Statute of the Special Court for Sierra Leone (SCSL), on pardons and commutation of sentences, do not automatically rule out pardons for war crimes, crimes against humanity, and genocide, but rather authorize the President of these judicial institutions to decide a request for pardon on the basis of the general principles of law. The ICC Statute does not address the issue of requests for pardon, which means that it does not explicitly rule them out. Hence, had customary international law prohibited pardons for crimes against humanity at the time of the adoption of these four statutes (which were adopted *after* the pardons by Menem), their drafters probably would have inserted a provision in these instruments to that effect.

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Furthermore, under customary international law, the obligation to punish international crimes does not appear to be absolute. If it was, international criminal courts and tribunals would not, for example, be allowed to enter into plea agreements with defendants, as this practice usually entails dropping charges of international crimes and thus halting the investigation, prosecution, and punishment of the underlying conduct. Twenty such agreements have been concluded before ICTY, and several before the ICTR as well.[43] Therefore, if the obligation to punish international crimes is not absolute, it does not make sense that pardons for crimes against humanity will automatically violate such obligations, as the Supreme Court suggested.

In sum, the Supreme Court's decision is persuasive to the extent that it is grounded on the provisions of the ACHR and the case law of the IACtHR, because under this legal regime there is well-established case law prohibiting the enactment of laws such as the Amnesty Laws. On the other hand, the legal reasoning based on alleged norms of customary international law was unpersuasive.

## Conclusions

The investigation and prosecution of the serious human rights violations committed in Argentina during the military dictatorship were paralyzed for approximately twenty years. The three most significant legal impediments to their investigation and prosecution were statutory limitations, Amnesty Laws, and presidential pardons. The Supreme Court resolved these legal hurdles by interpreting international law, particularly the ACHR as interpreted by the IACtHR and, more generally, norms of *jus cogens* and customary international law.

The power of the courts of Argentina to directly apply the provisions of the ACHR is uncontroversial because this treaty was incorporated into the Constitution of Argentina (Article 75(22)) in 1994. The Supreme Court's holding that the courts of Argentina ought to apply the ACHR's provisions as interpreted by the IACtHR is logical because the ultimate objective of this judicial body is the application and the interpretation of the ACHR (and other human rights treaties). This explains why the annulment of the Amnesty Laws and presidential pardons on the ground that they were inconsistent with the ACHR as interpreted by the IACtHR was generally uncontroversial. However, Judge Fayt's dissenting opinion in *Simón and others* pointed out that the majority inappropriately invoked *Barrios Altos* because it was not analogous to the case at stake.

The power of the Supreme Court to directly apply customary international law is also uncontroversial, as reflected by the Supreme Court's case law.[44] Yet, the Supreme Court's treatment of customary international law in the three cases reviewed in this article was not very careful, for two reasons. First, in *Arancibia Clavel* and *Mazzeo and others*, the Supreme Court conflated the terms *jus cogens* and customary international law, disregarding their conceptual difference. Second, the Supreme Court applied rules of customary international law of questionable legal foundation. In its decision, the Supreme Court failed to justify the existence of a rule of customary international law whereby (i) crimes against humanity in the 1970s were not subject to statutory limitations and (ii) pardons for crimes against humanity are impermissible. While the application of the latter "rule" of customary international law did not alter the outcome of the proceedings (because this rule was applied in place of a more specific ACHR provision), the application of the former "rule" was crucial to the final adjudication of the case at hand.

Be that as it may, the Supreme Court's decisions discussed in this article have a great practical significance in Argentina. They have paved the way for the investigation and prosecution of all those who had benefited from the Amnesty Laws and presidential pardons. The conviction of General Videla is the best example in this regard. Many other convictions will likely follow over the next couple of years, given the long list of trials set to start in 2011.[45] True, justice should happen in a timely fashion; but it is better late than not at all. ***HRB***

**ENDNOTES: Overcoming Domestic Legal Impediments to the Investigation and Prosecution of Human Rights Violations**

[1] Tribunal Federal Oral No. 1 [Oral Federal Tribunal No. 1], 22/12/2010, "Alsina, Gustavo Alfonso y otros s/imposición de tormentos agravados y homicidios calificados," unreported (Arg.).

[2] *See* Comisión Nacional sobre la Desaparición de Personas (CONADEP) Part IV (1984).

[3] Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal de la Capital Federal [National Court of Federal Criminal and Correctional Appeals of the Federal Capital], 12/09/1985, "Causa originariamente instruida por el Consejo Supremo de las Fuerzas Armadas en cumplimiento del decreto 158\83 del Poder Ejecutivo Nacional," unreported (Arg.) *available at* www.derechos.org/nizkor/arg/causa13/nota.html.

[4] Law No. 23.492, *La Ley de Punto Final* [Final Stop], Dec. 29, 1986, B.O.; Law No. 23.521, *La Ley de Obedencia Debida* [Amnesty Law], June 9, 1987, B.O.

[5] Law No. 23.492, *La Ley de Punto Final* [Final Stop], Dec. 29, 1986, B.O., *available at* www.derechos.org/nizkor/arg/ley/.

[6] Law No. 23.521, *La Ley de Obedencia Debida* [Amnesty Law], June 9, 1987, B.O.

[7] President Menem's Decrees of Pardon. Nos. 1002–05 (10/7/89).

[8] President Menem's Decrees of Pardon. Nos. 2741–43 (12/30/90).

[9] *See* "Constitucionalistas apoyan el fallo de la Cámara", December 22, 2004, http://www.iprofesional.com/notas/10291-Declaran-validas-las-leyes-de-Punto-Final-y-Obediencia-Debida.html. Last accessed on February 3, 2011.

[10] Corte Suprema de Justicia [CSJN], 24/8/2004, "Arancibia Clavel, Enrique Lautaro s/ homicidio calificado y asociación ilícita y otros – causa no 259," ¶¶ 1-12, Case No 259, A 533 XXXVIII; ILDC 1082 (AR 2004), *available at* http://www.diariojudicial.com/nota.asp?IDNoticia=22678#. For a summary of the decision translated into English see *Oxford Reports on International Law in Domestic Courts*, Chile v. Arancibia Clavel, Appeal Judgment, Case No 259, A 533 XXXVIII; ILDC 1082 (AR 2004).

[11] *Id*. ¶ 12.

[12] *Id*. ¶¶ 13-14.

[13] *Id*. ¶¶ 28, 32. Note that according to Article 53 of the Vienna Convention on the Law of Treaties, rules of *jus cogens* are those "accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

[14] *Id.* ¶¶ 37-38.

[15] *Prosecutor v. Delalić*, Case No. IT-96-21T, ¶ 424 (Int'l Crim. Trib. For the Former Yugoslovia Nov. 16, 1998).

[16] *See* Antonio Cassese, *International Criminal Law* 101 (Oxford University Press, 2nd ed. 2008).

[17] Cf. Article 38(1)(b) and (d), Statute of the International Court of Justice.

[18] *Supra* note 9, ¶¶ 28, 32.

[19] *See* op. cit. *supra* note 9, at 3.

[20] Corte Supreme de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 14/06/2005, "Simón and others v. Office of the Public Prosecutor / Appeal Judgment," S. 1767. XXXVIII; ILDC 579 (Arg.).

[21] *Id*. ¶¶ 1-6.

[22] *Id*. ¶ 24.

[23] *Id*. ¶ 14-15.

[24] *Id*. ¶ 16.

[25] *Id*. ¶ 17.

[26] *Case of Barrios Altos v. Peru*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 75 (Mar. 14, 2001).

[27] *Simón and Others*, ¶ 31.

[28] *Id.* ¶ 16 (Fayt, J., disssenting).

[29] *Id*. ¶ 37.

[30] *Id*. ¶ 39-42.

[31] *Id*. ¶¶ 49-53.

[32] *Id*. ¶¶ 78-85.

[33] *See, e.g.*, Christine Bakker, *A Full Stop to Amnesty in Argentina*, 3 J. Int'l Crim. Just. 1106, 1106-20 (2005).

[34] Santiago Lagarre, *Crimes Against Humanity, Reasonableness and the Law: The Simón Case in the Supreme Court of Argentina*, 5 Chinese J. Int'l L. 723, 723-732 (2006).

[35] Victoria Ginzberg, *Se está empezando a hacer justicia,* 12, August 5, 2006, www.pagina12.com.ar/diario/elpais/1-71002-2006-08-05.html.

[36] Corte Supreme de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 13/07/2007, "Mazzeo and others, Recourse of Cassation and Unconstitutionality," M 2333 XLII; ILDC 1084 (Arg.).

[37] *Id*. ¶ 9.

[38] *Id*. ¶ 10.

[39] *Id*. ¶ 32.

[40] *Id*. ¶ 38.

[41] For a definition of *jus cogens, see* Article 53 of the 1969 Vienna Convention on the Law of Treaties. *Vienna Convention on the Law of Treaties* art. 53, May 23, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969).

[42] Corte Supreme de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 14/06/2005, "Simón and others v. Office of the Public Prosecutor / Appeal Judgment," S. 1767. XXXVIII; ILDC 579 (Arg.), ¶ 22 (Fayt, J., disssenting).

[43] *See* Rules of the International Criminal Tribunal for the Former Yugoslavia, www.icty.org/sid/26 (last visited Mar. 23, 2011).

[44] *See, e.g.*, *Provincia de La Pampa v Provincia de Mendoza, Fallos 310:2478*, Dec. 3, 1987.

[45] For the list of trials set to start soon, see www.mpf.gov.ar/Accesos/DDHH/Docs/Cuadro_de_juicios_programados_diciembre_2010.pdf (last visited Mar. 23, 2011).